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8 **BEFORE THE**
STATE BOARD OF OPTOMETRY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. CC 2010-165

11 **THOMAS L. BLAKE**
12 **11847 South Street**
13 **Cerritos, CA 90703**

A C C U S A T I O N

14 **Optometrist License No. 4626**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Mona Maggio (Complainant) brings this Accusation solely in her official capacity as
20 the Executive Officer of the State Board of Optometry, Department of Consumer Affairs.

21 **License History**

22 2. On or about September 21, 1963, the State Board of Optometry issued Optometrist
23 License Number 4626 to Thomas L. Blake (Respondent). The Optometrist License was in full
24 force and effect at all times relevant to the charges brought herein and will expire on December
25 31, 2013, unless renewed.

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4. Section 810 of the Code states in relevant part that:

“(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

5. Section 3105 of the Code provides that:

6. Section 3106 of the Code states that: “Knowingly making or signing any certificate or other document directly or indirectly related to the practice of optometry that falsely represents the existence or nonexistence of a state of facts constitutes unprofessional conduct.”

“The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

1 (a) Violating or attempting to violate, directly or indirectly assisting in or abetting the
2 violation of, or conspiring to violate any provision of this chapter or any of the rules and
3 regulations adopted by the board pursuant to this chapter.”

4 * * *

5 “(e) The commission of fraud, misrepresentation, or any act involving dishonesty or
6 corruption, that is substantially related to the qualifications, functions, or duties of an optometrist.

7 (f) Any action or conduct that would have warranted the denial of a license.”

8 8. Penal Code section 550 states, in relevant part:

9 “(a) It is unlawful to do any of the following, or to aid, abet, solicit, or conspire with any
10 person to do any of the following:”

11 * * *

12 “(6) Knowingly make or cause to be made any false or fraudulent claim for payment of a
13 health care benefit.

14 (7) Knowingly submit a claim for a health care benefit that was not used by, or on behalf
15 of, the claimant.”

16 **COST RECOVERY**

17 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
18 administrative law judge to direct a licensee found to have committed a violation or violations of
19 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
20 enforcement of the case.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct-Insurance Fraud)**

23 10. Respondent is subject to disciplinary action under Sections 810(a)(1) and 810(a)(2),
24 in conjunction with Section 3110, subdivisions (a), (e) and (f), in that between January 2008 and
25 December 2008, Respondent fraudulently submitted bills to Vision Service Plan (VSP), as
26 follows:

27 11. On or about March 7, 2006, Respondent entered into a VSP Member Doctor
28 Agreement with VSP, under which he was permitted to provide services to patients with VSP

1 coverage and to bill VSP for payment for his services, as provided for by the agreement.

2 12. On or about May 28, 2009, VSP conducted an audit at Respondent's office of 63 of
3 Respondent's patient records. The investigator for VSP requested a total of 63 patient records for
4 a one-year period of time, between January 2008 and December 2008. As the staff pulled the
5 requested patient records, they would hand the records to another staff member named Karen,
6 who would then white-out information and write in information to match what was billed. The
7 VSP investigator advised the staff person three times to stop changing the records. After the third
8 time of being advised to stop whiting out information in the patient records, the staff member
9 stopped providing the VSP investigator with the requested records. Out of the 63 patient records
10 which were requested by the VSP investigator, 12 patient records were not provided during the
11 audit by Respondent's staff members.

12 13. Many of the records which VSP's investigator reviewed contained discrepancies,
13 including billing for contact lens materials when the patients received glasses, and billing for
14 examinations without supporting documentation. Of the 51 records obtained, 13 showed billing
15 for examinations without documentation. There was no documentation of the contact lens
16 materials received, even though the bills requested payment for contact lenses.

17 14. In a Notice of Adverse Action and Restitution Demand from VSP to Respondent
18 dated June 17, 2009, VSP notified Respondent that it was terminating its contract with him,
19 effective at the close of business on September 22, 2009. VSP also demanded that Respondent
20 repay improper claims he had previously submitted to VSP, in the amount of \$44,568, plus the
21 cost of the audit, in the amount of \$3,117 (for a total of \$47,685). On August 21, 2009, a hearing
22 was held before VSP's Quality Care Committee Hearing Panel, which concluded that VSP
23 produced evidence in support of its noticed action, which Respondent had not adequately refuted,
24 and which affirmed the VSP Optometry Director's decision to terminate VSP's Member Doctor
25 Agreement with Respondent. Respondent repaid at least \$44,588.17 of the restitution claim
26 requested by VSP.

27 15. Incorporating by reference the allegations in Paragraphs 10 through 14, Respondent's
28 conduct, in knowingly presenting false and fraudulent claims to VSP for payment, constitutes

unprofessional conduct within the meaning of Code sections 810 (a)(1) and 810(a)(2) and provides grounds for disciplinary action under Code section 3110, subdivisions (a), (e) and (f).

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Alteration of Medical Records)

16. Respondent is subject to disciplinary action under Section 3105, in conjunction with Section 3110, subdivisions (a) and (e), in that Respondent fraudulently submitted bills to VSP.

17. Incorporating by reference the allegations in Paragraphs 10 through 15, Respondent's conduct, in fraudulently submitting bills to VSP, necessarily involved altering, modifying and/or omitting information in the medical records of some of his patients, and creating a false medical record with fraudulent intent. In addition, Respondent elected to operate his business through his employees, and is subject to discipline for the acts of his employee, who changed information in 2-3 patient records in order to match the billing records, in front of the VSP investigator during the audit. This conduct constitutes unprofessional conduct within the meaning of Section 3105 and provides grounds for disciplinary action under Section 3110, subdivisions (a) and (e).

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - False Representation of Facts)

18. Respondent is subject to disciplinary action under Section 3106, in conjunction with Section 3110, subdivision (e), in that Respondent fraudulently submitted bills to VSP.

19. Incorporating by reference the allegations in Paragraphs 10 through 17, Respondent's conduct, in fraudulently submitting bills to VSP, necessarily involved knowingly creating paperwork directly related to his practice of optometry that falsely represented facts regarding several of his patients. This constitutes unprofessional conduct within the meaning of Section 3106 and provides grounds for disciplinary action under Section 3110, subdivision (e).

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the State Board of Optometry issue a decision:

1. Revoking or suspending Optometrist License Number 4626, issued to Thomas L. Blake;
2. Ordering Thomas L. Blake to pay the State Board of Optometry the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: September 10, 2012


MONA MAGGIO
Executive Officer
State Board of Optometry
Department of Consumer Affairs
State of California
Complainant

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